84TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 1715

CROSSE & BLACKWELL CO.

JANUARY 31, 1956.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 4633]

The Committee on the Judiciary, to whom was referred the bill (H. R. 4633) for the relief of Crosse & Blackwell Co., having considered the same, report favorably thereon with amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 2, line 1, after the word "Act" strike out "in access of 10 per centum thereof".

The purpose of the proposed legislation is to pay the sum of $1,620.09 to Crosse & Blackwell Co., of Baltimore, Md., in full settlement of all claims against the United States. Such sum represents the tax refund on four overseas shipments of alcoholic products on which the taxes were paid at the time of bottling, but on which drawback claims were rejected.

STATEMENT OF FACTS

The Secretary of the Treasury in his report dated June 10, 1955, gives in detail the history of this proposed legislation and recommends favorable consideration of the bill. Also, attached hereto and made a part of this report is statement of Mr. Granville F. Atkinson, the secretary-treasurer of the Crosse & Blackwell Co. giving additional evidence as to the merits of the bill.

Therefore, after careful consideration your committee concurs in the recommendation of the Treasury Department, and recommend favorable consideration be given the bill.

Letter from the Secretary of the Treasury is as follows:

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, June 10, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary, House of Representatives,
Old House Office Building, Washington 25, D. C.

MY DEAR MR. CHAIRMAN: This letter is in reply to your request of March 10, 1955, for a report on H. R. 4633 (84th Cong., 1st sess.), entitled "A bill for the relief of Crosse & Blackwell Co."

H. R. 4633 would authorize and direct the Secretary of the Treasury to pay, out of any money in the Treasury not otherwise appropriated, the sum of $1,620.09 to the Crosse & Blackwell Co., of Baltimore, Md., in full settlement of all claims against the United States. The bill recites that this sum "represents the tax refund on four overseas shipments of alcoholic products on which the taxes were paid at the time of bottling, but on which drawback claims were rejected."

This Department has made a careful investigation into the facts of this case. It appears that between January 22 and July 17, 1951, the Crosse & Blackwell Co. made two shipments of bottled alcoholic products for export to foreign countries and two shipments of such products for loading as supplies upon certain vessels and aircraft (this latter disposition being considered "exportation"). The spirits contained in all four of these shipments had originally been bottled especially for domestic consumption, and accordingly had red strip stamps attached to the bottles. In connection with the filling of these orders the company removed the red strip stamps, changed the labels, and recased the goods. These operations took place under the supervision of a United States storekeeper-gauger, who approved and signed the proper forms covering the preparation of the bottles for export.

The applicable law provided, however, that "such distilled spirits and wines [must] have been packaged or bottled especially for export, under regulations prescribed by the Commissioner," in order for the company to receive a refund, or "drawback," of the internal revenue tax which had been paid (Internal Revenue Code of 1939, sec. 3179; see Treasury Regulations 28, sec. 176.11 et seq.). The regulations prescribed various requirements, such as the filing of proper application and notice of intention to bottle especially for export, the conducting of bottling for export separately from bottling for domestic purposes, and the compliance with special labeling, casing, and marking requirements.

Inasmuch as the goods in question were not "packaged or bottled especially for export," but instead were originally bottled for domestic use and later had the tax stamps removed and were recased and relabeled, the company's claims for drawback of tax were rejected by this Department.

As a general rule, this Department believes that it is inappropriate to alleviate, by the enactment of private relief bills, the consequences of individual noncompliance with generally applicable provisions of law. In the present case, however, it appears quite possible that a misunderstanding arose, on the part of the Crosse & Blackwell Co., as to the steps necessary for compliance with the law because of the acquiescence of the Government's representative (the storekeeper-gauger) in the steps which were actually taken by the company. Because of this exceptional circumstance in the case, and because it appears that the company attempted in good faith to comply with the law, this Department would not object to the enactment of H. R. 4633.

The Director, Bureau of the Budget, has advised the Treasury Department that there is no objection to the presentation of this report.

Very truly yours,

H. CHAPMAN ROSE,
Acting Secretary of the Treasury.

STATE OF MARYLAND,
City of Baltimore: To Wit:

On the 1st day of July 1955, personally appeared before me Granville F. Atkinson, the secretary-treasurer of the Crosse & Blackwell Co., and made oath, in due form of law, as follows:

These claims aggregate $1,620.09 and are designated at the liquor division as drawback entries 6, 7, 8, and 9.

In the fall of 1950, we received small cocktail orders for export. The first was from the group locker fund, special service section, Headquarters and Service Group, General Headquarters, Far East Command, APO 500. This order was

split into three shipments as follows: 19 cases Manhattan, 9 cases Tom Collins, 9 cases Martini and 9 cases Old Fashioned. The second shipment was 25 cases eggnog and the third was 10 cases eggnog, 3 cases Manhattan and 3 cases Martini. These shipments were grouped together and designated as "Drawback entry No. 4."

Since no raw materials that are already in process may enter a batch prepared for export, each export order must be especially prepared, starting with new barrels from the warehouse and new cases from either a wholesale operation or our finished products room.

As these orders were too small to be processed directly in the prescribed manner and since they were destined for the Armed Forces overseas, we went to the fifth district office of the Alcohol Tax Unit in Baltimore to ask if they knew of any manner in which these orders could be handled. We were told that it was permissible to withdraw cases bottled for domestic consumption to be rebottled for export, and it is from this term, rebottling, that our difficulty arose. Alcohol Tax Unit Form 230, which is the Government record of goods dumped and bottled without rectification, is also used for the type of operation that we intended to carry out as set forth in regulation 15, paragraph 13654, section 190–706 headed "Rebottling, Relabeling and restamping bottled spirits."

The following information for carrying out this operation along with the amendments to be applied to standard Government forms was given to us by Alcohol Tax Unit people of the fifth district office and, just for the record, we at one time or another talked to the following people at the fifth district office concerning this matter: Mr. Schlusser and Mr. Williams, both of whom usually referred us to Mr. Munter and Mr. Amid. It was from one of the latter two people that the following data was obtained.

The following are instructions, as before mentioned, for handling this operation:

"Information put on front of form 230—'The above-described spirits or wines rectified pursuant to form 122, serial No. ____, dated _____. and bottled pursuant to form 237, serial No. ____, dated _____, are to be dumped and bottled especially for export with benefit of drawback'."

"Information put on back of form 230—'The above spirits were bottled for export with benefit of drawback as shown on reverse side of form 230'."

Form 230 "Description and gage of spirits or wines for bottling without receivication" changed to read "Description and gauge of spirits or wines for bottling especially for export with benefit of drawback." Packages changed to "Cases"; "for bottling without rectification" changed to "for bottling especially for export with benefit of drawback"; "Gauge of Bottling tank after reduction" changed to "Gauge of original cases". Wherever word "Packages" appeared, changed to "cases".

Also on back of form 230 information with regard to spirits and wine listed for drawback purposes.

Notation put on form 230 by S. S. Gauger as follows: "Scalped stamps not attached to form 230 because spirits were contained in bottles, all of which bore proper red strip stamps."

Form 1582—Quadruplicate.

Form 1583—Triplicate (did not use).

Form 1684—Triplicate (did not use).

"Rebottling" in the liquor business is a term used for just about any operation carried out on bottles which require the destruction and the reapplication of red strip stamps. It is this fact that determines whether or not the Alcohol Tax Unit forms 230 are filed. For instance, it is our practice to store under cold storage conditons eggnog carried from one year to the next where the amount is substantial. When we bring these goods out of the cold warehouse on a humid day, the bottles sweat and ruin the labels. If we return these cases to the bottling floor of the rectifying plant and relable them, it is termed a "rebottling" operation. In fact, the Alcohol Tax Unit uses various forms of this term, such as "token rebottling "and" constructive rebottling" at times.

For the above described operation, no Alcohol Tax Unit Form 230 would be filed. However, if the operation were to be carried out upon a day that was sufficiently humid to ruin the cel-o-seals and strip stamps as well as labels, rebottling operation would be carried out for which a form 230 would be filed, the difference in the two instances being whether or not the new red strip stamps were required. But in both instances the operation is considered a rebottling operation. This comes from the fact that the bottling operation does not stop between the filler and the capper. It is not considered to be complete until the

bottles are in the cases and the cases physically removed from the bottling floor to the finished products room, which, of course, is still under Alcohol Tax Unit supervision.

The first claim No. 4, as designated above, was prepared as instructed, shipped and the drawback subsequently paid by the Treasury.

The next order, designated as "Drawback Entry No. 5," consisting of 5 cases of Manhattan, 5 cases Martini, 5 cases Old Fashioned and 5 cases Gibson, was shipped to the O. S. S. Sogo Co. Ltd., Kobe, Japan, after being prepared in a manner similar to entry No. 4 and the drawback subsequently paid.

The next order, designated as "Drawback Entry No. 6," consisted of 13 cases Gibson and 7 cases Manhattan Cocktail and was consigned to the Chicago & Southern Airlines for use on their overseas flights. The claim amounted to $292.45 and was subsequently rejected after it had been prepared in a manner identical to claims 4 and 5.

Drawback claim No. 7: 13 cases 5th Manhattan Cocktail; 7 cases 5th Gibson Cocktail.

Shipped to Chicago & Southern Air Lines, New Orleans, La., for use on their flights outside the continental limits of the United States. Our claim for $273.39 not allowed on the same basis as the rejection of drawback claim No. 6.

Drawback claim No. 8: 15 cases 5th Manhattan Cocktail; 15 cases 5th Martini Cocktail.

Shipped to the group locker fund, far Eastern Command, Tokyo, Japan, for subsequent resale to the Armed Forces in that theater. Our claim for $395.36 was not allowed on the same basis as the rejection of drawback claim No. 6.

Drawback claim No. 9: 25 cases 5th Manhattan Cocktail; 25 cases 5th Martini Cocktail.

Shipped to Saccone & Speed, Ltd., Rochester, Kent, England, for subsequent resale to the Armed Forces in that theater. Our claim for $658.89 was not allowed on the same basis as the rejection of drawback claim No. 6.

Claim No. 6, as requested in our memo of August 16, was subsequently reopened and, after much discussion, it was finally decided against us by Mr. Avis, the Deputy Commissioner in Charge of the Alcohol Tax Unit, at the insistence of his legal division. However, Mr. Avis and Mr. Grigsby, the Assistant Deputy Commissioner, both stated that, in their opinion, they were satisfied that we had been so instructed by people in the fifth district office and that, while they were not in a position to overrule their legal opinion and pay this claim, were we to go to our local representative in Congress and request a private bill to reclaim this money they would not oppose it and, in fact, would write a favorable opinion.

In several instances since then, when I have been in Washington and have for one reason or another seen Mr. Avis or Mr. Grigsby, I have been asked if we had ever done anything about getting our money back on these claims. In fact, it was after my most recent conversations with Mr. Grigsby concerning other drawback matters for Eastern Avenue, in which we received favorable decisions, that the matter again arose. It was at that time pointed out that it is the practice of the Alcohol Tax Unit to oppose all such private bills because, in their opinion, the possession of a political advantageous position by one distiller or rectifier should not give him privileges not accruing to others, but that, in our own case, because we had acted in good faith and because they were satisfied that we had been so instructed by Alcohol Tax Unit personnel, they would make an exception and go along with it. They pointed out, too, that we should not allow further time to elapse before doing it if we ever wanted to, because too much depended upon personal memory and impressions of what took place at a time already 2 years old.

THOMAS R. CORNELIUS, JR.,
Notary Public.

My commission expires May 6, 1957.

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